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**United States Court of Appeals
For the First Circuit**

No. 04-1528

PETER A. GROOME,

Petitioner, Appellant,

v.

TIMOTHY HALL,

Respondent, Appellee.

Before

Boudin, Chief Judge,
Torruella and Howard, Circuit Judges.

ORDER OF COURT

Entered: December 2, 2004

In its October 26, 2004 order, the district court vacated the June 4, 2004 order denying a certificate of appealability and reaffirmed its July 20, 2004 order granting a partial certificate of appealability, limited to equitable tolling. Consequently, the equitable tolling issue may proceed to full briefing, and we treat petitioner's July 7, 2004 filing as a request for an expanded certificate of appealability.

After a thorough review of the record, we deny an expanded certificate of appealability. First, petitioner argues that his petition for a writ of habeas corpus came within the statute of limitations and that the district court miscalculated in finding it did not. However, the district court correctly counted the ninety-day period in which petitioner might have applied for a writ of certiorari to appeal the final decision of the Massachusetts Supreme Judicial Court and the one-year statute of limitations to apply for a writ of habeas corpus. The combined time periods ended on January 3, 2003. Even if we deem the statute of limitations tolled from the time that petitioner's counsel mailed his motion

for a new trial instead of the date on which it was docketed, the two-day difference does not help petitioner. In either case, his petition for writ of habeas corpus was filed after the statute of limitations had run.

Second, for the reasons articulated by the magistrate, we do not accept petitioner's argument that his motion for funds, filed prior to the motion for new trial, should count as a "pending" motion for post-conviction relief.

The appeal may proceed with respect to equitable tolling. The clerk will set a briefing schedule.

By the Court:
Richard Cushing Donovan, Clerk.

By: MARGARET CARTER
Chief Deputy Clerk.

Certified Copies to: Hon. Patti Saris, William Ruane, Clerk of Court

[cc: Joseph S. Berman, Esq.
Elizabeth L. Bostwick, Esq.
Maura D. McLaughlin, Esq.]

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FIRST CIRCUIT COURT OF APPEALS
BOSTON, MA

By: Maura D. McLaughlin 12/2/04